PAUL C. KOHLMAN

IBLA 77-405 Decided September 21, 1977

Appeal from that portion of decisions of Montana State Office, Bureau of Land Management, requesting additional rental payment prior to issuance of noncompetitive oil and gas leases M 25121 etc.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Rentals--Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, even though the lease offers were filed prior to the specified date. The filing of an application for a lease prior to its acceptance does not create a right to a lease which is immune from application of a subsequently amended administrative regulation, nor does administrative delay in the processing of the lease offer preclude proper application of such regulation.

APPEARANCES: Paul C. Kohlman, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Paul C. Kohlman appeals from those portions of the decisions of the Montana State Office, Bureau of Land Management (BLM), dated May 2, 4 and 5, 1977, requiring payment of advance annual first-year's

rental on noncompetitive oil and gas leases M 25121 etc., 1/ so as to comply with the requirements of 43 CFR 3103.3-2, which increased the rental rate from 50 cents per acre to $1 per acre, effective February 1, 1977, 42 F.R. 1032.

Appellant filed the 17 offers involved in this appeal on May 1 and 2, 1973, and paid a total rental on the offers to lease of $20,648. Computed at the new rate, appellant owes a balance of $20,321.

In his statement of reasons, appellant notes that 4 years have elapsed between the filing of his offers to the date of the decisions in question, and 3 years from the filing of the offers to the hearings by the Department of the Interior on the increased rental rates. He contends that the delay in issuing the lease was caused by BLM's failure to prepare an environmental impact statement. He says that the 50 cents per acre rental was a major consideration in filing the offers. Now, appellant argues, he must pay an additional rental of $20,321 because of the Government's delay, or suffer rejection of his lease offers.

Appellant contends that the manner in which the regulation increasing the rental was put into effect was unreasonable, arbitrary and capricious. He asserts that the Secretary of the Interior, in adopting the regulation increasing rentals effective with all leases issued after February 1, 1977, did so knowing that many lease offers which had been pending for an excessive period could not and would not be processed before February 1, 1977; that he realized that offerors would suffer financial loss and that the increased rental should have been effective with the filing of new offers.

[1] It is true that appellant filed his offers to lease long before the Department's intention to increase the rental was published. However, the filing of an application for a noncompetitive oil and gas lease, prior to acceptance 2/ does not create a right to a lease which is immune from application of a subsequently amended administrative regulation. Hannifin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971); Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969); Viola J. Kirkwood, _ IBLA __ (1977); Barbara A. Joeckel, 30 IBLA 376, 377 (1977).

1/ The lease offers involved in this appeal are M 25121, M 25122, M 25124 through M 25135 and M 25140 through M 25142.

2/ Acceptance of the offer and issuance of the lease is indicated by the signature of the authorized officer of the BLM. 43 CFR 3111.1-1(c); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd 494 F.2d 1156 (D.C. Cir. 1974).

Admitting there has been a lengthy delay in the issuance of these leases, the lands involved are located in the Custer National Forest and are under the administrative jurisdiction of the Forest Service, Department of Agriculture. The Forest Supervisor informed BLM on June 8, 1973, that the lands involved are in an area sensitive in nature and have the potential for a variety of uses. Since the multiple use analysis of these lands was not completed, he recommended that these applications be placed in suspense. On June 28, 1973, appellant was informed that his offers were suspended. On April 19, 19, 1977, the Forest Service recommended issuing the oil and gas leases with special stipulations. The State Office issued its decisions in early May 1977 but by this time the rent had increased.

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date even though the lease offers were filed prior to the specified date. D. R. Gaither, 32 IBLA 106 (1977); Brad J. Hays, 31 IBLA 374 (1977); Guy M. Willis, 30 IBLA 374 (1977). Therefore, if the lease is to issue after February 1, 1977, the effective date of the rental increase, it must be issued at the increased rental rate required by 43 CFR 3103.3-2(a). Guy M. Willis, supra; Milton J. Lebsack, 29 IBLA 316 (1977).

The fact that the administrative procedures caused delays in processing these lease offers does not vest any rights in the appellant. 43 CFR 1810.3 provides:

> (a) The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers or agents, or by their laches, neglect of duty, failure to act, or delays in the performance of their duties.

While it is regrettable that approximately 4 years have elapsed between the filing of the lease offers and effective date of the regulation requiring additional rental, it is clear the delay cannot preclude a proper application of the regulation. See Thelma Wright, 27 IBLA 198, 200 (1976).

Appellant's argument that the Secretary's application of the revised rental rate to lease applications pending prior to the change in regulation was arbitrary and capricious was discussed in Milton Lebsack, supra at 318:

> Although it might appear that applicants for oil and gas leases pending prior to February 1, 1977, have been treated unfairly under the Amended Regulations, it is important to note that there is an established precedent in the Department, reinforced by Court decisions, which dictates that no rights or responsibilities attach to a lease applicant until the lease is actually issued. [3/]

Accordingly, we find that the $1 per acre rate must be imposed. If appellant is not satisfied with this, he is free to withdraw his offers.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

3/ Excerpt from letter of February 1, 1977, by Secretary Cecil D. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, Malcolm Wallop, John Melcher, Jake Garn and Howard Cannon.